Teamsters Local Union No. 515 (Cavalier Corporation) *and* David E. Barber. Case 10–CB–3391

December 11, 1981

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On September 1, 1981, Administrative Law Judge Hutton S. Brandon issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Teamsters Local Union No. 515, Chattanooga, Tennessee, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Causing or attempting to cause the Cavalier Corporation to unlawfully discriminate against David E. Barber by filing grievances to change his job assignments or duties because of his lack of membership in the Union."

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] We shall modify par. 1 (a) of the Administrative Law Judge's recommended Order to conform more closely to the violation found. We shall also substitute a new notice for that of the Administrative Law Judge, containing language which conforms to par. 2(b) of the Administrative Law Judge's recommended Order.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT cause or attempt to cause Cavalier Corporation to unlawfully discriminate against David E. Barber by filing grievances to change his job assignments or duties because of his lack of membership in Teamsters Local Union No. 515.

WE WILL NOT maintain or process any grievance with regard to the job assignments and duties of David E. Barber which was filed because he resigned his membership in the Union.

WE WILL NOT in any like or related manner restrain or coerce employees of Cavalier Corporation in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL notify Cavalier Corporation that we have no objection to its employment of David E. Barber in the same classification with the same job duties he held prior to July 16, 1980.

WE WILL withdraw our grievance and process no further grievances with regard to the job duties and assignments of David E. Barber which were filed and maintained because he resigned his membership in the Union.

WE WILL make David E. Barber whole for any loss of earnings he may have suffered as a result of the unlawful discrimination against him, plus interest.

TEAMSTERS LOCAL UNION NO. 515

DECISION

STATEMENT OF THE CASE

HUTTON S. BRANDON, Administrative Law Judge: This case was heard at Chattanooga, Tennessee, on June 23, 1981. The charge was filed on August 25, 1980,[1] by David E. Barber, an individual, hereinafter called Barber, and the complaint based on the charge was issued on October 6, alleging that Teamsters Local Union No. 515, hereinafter called the Union or Respondent, violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, hereinafter called the Act, by causing or attempting to cause Cavalier Corporation, Barber's employer, to change the job duties of Barber because he had resigned his membership in the Union. The issue presented is whether the Union's action in the filing of a grievance involving Barber's job duties and resolving that grievance to Barber's detriment was motivated by Barber's lack of membership in the Union and in order to encourage membership in the Union.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Cavalier Corporation, herein called the Company, is a Tennessee corporation with an office and place of business in Chattanooga, Tennessee, where it is engaged in the manufacture of bottle and can vending coolers. During the calendar year preceding issuance of the complaint herein, the Company sold and shipped from its Chattanooga plant goods valued in excess of $50,000 directly to customers located outside the State of Tennessee. The complaint alleges, the Union by its answer thereto admits, and I find and conclude that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the Union admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act. The complaint further alleges and the Union admits that the Union and the Company have been at the times material parties to a collective-bargaining agreement which was effective from September 1, 1979, to August 31, 1980.

III. THE ALLEGED UNFAIR LABOR PRACTICE

Barber, the General Counsel's only witness, was employed by the Company more than 11 years prior to the hearing herein. He worked as an inspector in a department usually containing in excess of 30 other inspectors, all of whom were included in the appropriate collective-bargaining unit represented by the Union and covered by the collective-bargaining agreement referred to above and the preceding initial 1-year agreement executed in January 1979, but effective from August 1978.

For several years Barber, in addition to his regular inspection duties, was called upon by the Company to perform additional inspection and repair duties at its warehouse. While the frequency of his assignment to the warehouse duties was not clearly established in the record, it is clear from Barber's testimony that as a result of his assignment to warehouse duties he received an average of 6 to 10 additional hours of overtime pay per month. Time records compiled by the Company, subpenaed by Respondent, and received in evidence,[2] covering an 18-month period beginning January 1, establish that Barber did receive more hours of work, including overtime work, than some more senior fellow inspectors but less than some others.

Barber did not initially join the Union when it became the collective-bargaining agent in 1978. He testified that in view of his reluctance to join the Union, he received pressure from a number of people, including union stewards. In this regard, he testified that union stewards Terry Powell and Terry Cole in September 1978 called him a "freeloader" and a "scab" and related that if a picket line was set up in front of the plant and if he tried to come across, he would be shot or his house would be burned.

In August 1979, according to Barber, Ed Guffey, the union representative responsible for servicing the collective-bargaining agreement with the Company, attempted to persuade Barber to join the Union and in so doing told Barber that if he did not join the Union, he would not remain at work at the Company. In the same conversation, Barber testified, Guffey aggressively inquired of Barber about a prior statement Barber had made to employee Douglas McRoy to the effect that if Guffey ever tried to stop Barber from crossing a picket line, Guffey would look "funny" with a Chevrolet bumper stuck in his posterior. While Barber did not deny having made the comment, he explained to Guffey that he had just been shooting a "bunch of bull."

Barber testified that he and his wife, who was also an employee of the Company, joined the Union in September 1979. Thereafter, Barber had his union dues checked off by the Company.[3] Barber subsequently decided that he did not want to remain a union member and called Guffey in May to ascertain how he could go about getting out. Barber testified he was unable to get any information from Guffey so he contacted an attorney. On May 14 he went to the union hall and filed a withdrawal. He was later told by employee Doug McRoy, who at this time was an alternate union steward, that the withdrawal was a waste of time and that Barber was still in the Union.[4] On June 24 and July 2 Barber sent the Union

[1] All dates are in 1980 unless otherwise stated.

[2] Resp. Exh. 3.

[3] The Union's records reflect that the first dues deduction for Barber was on October 12, 1979. Resp. Exh. 3.

[4] The validity of the withdrawal is not clear from the record for while Guffey testified that Barber's withdrawal was effective from May 14 and no further dues were deducted, Guffey also testified that withdrawals were only applicable to situations where employees were on leaves of absence from employment or were terminated. Barber did not fit in either

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letters resigning from the Union and revoking his dues-checkoff authorization.[5]

Barber went on vacation in late June and returned to work on July 15.[6] On that day Georgeanne Finch, the union steward for Barber's department, asked him who he was going to "roll" and added that he was not going to do warehouse work anymore. Later that same week, Barber testified, he was told by the warehouse union steward, Dorothy Harris, that she had heard that someone else was coming to the warehouse in his place. Still later in the week, according to Barber, Barber asked his foreman, Chuck Lindsey, about the matter and Lindsey told him that a grievance had been filed regarding Barber's warehouse work.

It is undisputed that on July 16 Finch filed a grievance[7] contending that the transfer of Barber on that date to work in the warehouse necessitating the reassignment of someone else to Barber's regular work was a violation of the temporary transfer provision of article 16 of the collective-bargaining contract. As a remedy, the Union sought to have the senior inspector paid for the time that Barber worked at the warehouse. The grievance was resolved on August 5 with the Company agreeing to offer the warehouse work on a regular basis to the senior inspector who wanted it. Phyllis Jones, an inspector senior to Barber, thereafter was given the warehouse work until October when the Company, in a settlement of charges filed against it by Barber with the Board in Case 10–CA–16184, returned the warehouse work to Barber. Barber was still performing the warehouse work at the time of the hearing.

The General Counsel contends that the Union filed the grievance which adversely affected Barber's conditions of employment simply because Barber had resigned from the Union, and in so doing had violated Section 8(b)(1)(A) and (2) of the Act. In support of this contention the General Counsel relies upon the evidence of pressure put upon Barber to join the Union as outlined above, the timing of the filing of the grievance shortly after Barber had resigned from the Union and the fact that after his resignation from the General Counsel also relies on other testimony of Barber regarding comments made to him by union stewards following the filing of the grievance. Thus, Barber testified that after he had been removed from warehouse work alternate steward Doug McRoy told him that if he would be interested in getting back in the Union they would see what they could do about getting his job back at the warehouse for him. Still later, toward the end of August, according to Barber, union steward J. D. Newsome told Barber that Barber might not be paying union dues of $14 or $15 dollars, but "we're getting the amount anyway by knocking you out of going to the warehouse."

The Union's position is that the grievance filed which resulted in Barber's removal from warehouse work had nothing to do with his resignation from the Union, and, instead, was based upon a meritorious claim by various employees that the warehouse work should be awarded in accordance with the contract. More specifically, the Union argued that the warehouse job should have been made a full-time position and, absent making it a full-time position, the Company was violating the temporary transfer provision[8] of the collective-bargaining contract by transferring an inspector into the position sporadically while replacing that inspector on his regular job with another inspector.

To disprove the General Counsel's contentions regarding animus towards Barber because of his lack of union membership, the Union presented a number of witnesses. Terry Cole and Terry Powell both denied making any threats to Barber to cause him to join the Union. Moreover, according to the testimony of Guffey, neither Cole nor Powell was a union steward at the time in 1978 when Barber's testimony has it that they threatened him. Although Guffey admitted that he had talked to Barber in 1979 about joining the Union and had also discussed with Barber the threat concerning the Chevrolet bumper, he denied that he had ever told Barber that he would have to join the Union to work at the Company.

With respect to the filing of the grievance, McRoy testified for the Union that on a Friday while he was acting as steward in place of Georgeanne Finch who was on vacation in early July that a number of employees including inspectors Phyllis Jones, Calvin Dallas, and Gay Kegan complained to him about Barber's work at the warehouse and expressed concern why they could not go over and do the job too.[9] McRoy testified he related the complaint to Finch when she returned to work on the following Monday, July 14, and suggested she file a grievance on it. McRoy admitted that he was aware at the time the complaints were made to him about the warehouse job that Barber had said that he was going to get out of the Union, but denied that Barber's getting out

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category. Persons who had submitted withdrawal cards remained members of the Union but were relieved from any dues obligations. The fact that the Union honored the "withdrawal" may well have been a result of an administrative snafu in view of the terms of Barber's checkoff authorization. I therefore do not view Barber's early release from his checkoff obligation as evidence of either the Union's generosity or good will toward Barber. This view is further substantiated by Barber's uncontradicted testimony that McRoy told him the withdrawal was a waste of time and he was still in the Union.

[5] The applicable contractual provision on checkoff made checkoff authorizations irrevocable for 1 year or until the contract expired, whichever occurred sooner. G.C. Exh. 2. Barber explained that he sent two resignation and checkoff revocation letters to the Union because of some question of timeliness of the first letter. Apparently, the Union never made any contention that Barber's resignation and revocation was in any way untimely.

[6] While Barber testified he returned to work from vacation on Monday, July 21, the company time records reflect, and I find, he returned on Tuesday, July 15. Resp. Exh. 3.

[7] G.C. Exh. 3; Resp. Exh. 6.

[8] The provision referred to G.C. Exh. 2, art. 16, in pertinent part, as follows:

> 1. In the event it is necessary to temporarily transfer an employee within a department due to vacancies resulting from absenteeism, tardiness, leave of absence, etc., the department supervisor will determine which job or jobs can be discontinued or reduced in order to transfer the employees to fill the vacancies. Such employees will be removed in the reverse order of seniority and returned in the order of seniority. If more than one employee is to be transferred such employees will be given the opportunity to fill the available vacancies by seniority provided they can perform the job.

[9] The Company's time records listing the inspectors in the order of their employee or clock numbers, and thus in seniority order, reveal Jones and Kegan were above Barber in seniority while Dallas was below him.

of the Union had anything to do with his suggestion to Finch that a grievance be filed. Further, McRoy denied making the statement attributed to him by Barber to the effect that if Barber got back in the Union, they would see about getting his warehouse job back.

Finch testified that 2 months prior to the time the grievance was filed regarding warehouse work she had met with Bob Niswonger, the Company's vice president on a number of matters and the subject of the warehouse work came up. At that time, according to Finch, she argued that the warehouse job should be a permanent job and that it was violating the temporary transfer clause of the contract. Discussion on the subject was inconclusive and the matter was passed with Finch remarking that they would leave the situation like it was unless somebody complained. Finch testified that after she returned from vacation she got complaints from McRoy, Phyllis Jones, and Clara Moran, who was not an inspector, regarding the unfairness of Barber's warehouse work, and after unsuccessfully attempting to resolve the matter with Personnel Manager Brad Hillman and Foreman Lindsay went ahead with the written grievance. Finch conceded that she knew that Barber had gotten out of the Union but testified she pursued the grievance because "the people was on my back."

Finally, J. D. Newsome testified for the Union and admitted that he was a job steward for the Union during the period from July 1980 to March 15, 1981, but serviced a department other than Barber's. He denied that he had ever discussed with Barber his removal from the warehouse work. In addition, he denied that he had ever told Barber that while the Union was not getting union dues from Barber they were getting more than that by keeping him out of the warehouse job.

Discussion and Conclusions

A conclusion as to the Union's motivation in filing the grievance which adversely affected Barber is necessary to a determination of the existence of the violation of the Act alleged by the General Counsel. If the Union's motives were pure in the sense that the filing of the grievance was solely to enforce applicable provisions of the collective-bargaining agreement, then no violation has been established. It is well settled that the Board accommodates its enforcement of the Act to the right of persons to litigate their disputed claims in court rather than to condemn such action as an unfair labor practice. See *Clyde Taylor, d/b/a Clyde Taylor Company*, 127 NLRB 103 (1960). It goes without saying that a similar accommodation extends to the no lesser right of a union to enforce collective-bargaining agreements even though certain employees may be adversely affected by such action. However, the Board has held that where a union's processing of a grievance adversely affecting an employee or employees is prompted by an unlawful and discriminatory objective rather than by a genuine concern over the merit of the grievance or the integrity of the collective-bargaining agreement, its conduct falls within the proscriptions of Section 8(b)(1)(A) and (2) of the Act. *United Food and Commercial Workers International Union, District 227, AFL-CIO (The Kroger Co.)*, 247 NLRB 195 (1980).

A determination of the Union's motivation in the instant case must be based on facts established by the record, and such facts turn on which witnesses are to be believed. I found Barber to be a generally straightforward, candid, and generally accurate witness. However, his identification of Cole and Powell as being among those who tormented him in early 1979 regarding his lack of union membership is suspect because, contrary to his specific recollection at the hearing, his prehearing statement to the Board expresses some doubt as to the identity of those "union officials" who were harassing him. Nevertheless, he had named, with some uncertainty, Cole and Powell in his prehearing statement, and I am persuaded that his testimony, which was much more positive, was the product of genuine recollection rather than prevarication or contrived reconstruction. Moreover, I was unpersuaded by the denials of both Cole and Powell that they uttered the threats attributed to them by Barber. It is not at all unreasonable that they would urge Barber into union membership, nor is it unlikely that they might have referred to him as a "scab" or a "freeloader." Powell's denials that he ever had discussions with Barber about joining the Union were particularly hollow and unconvincing. And Cole's concession that he did talk to Barber about union membership lends no credence to his denial of any threats to Barber in view of his equivocal "not to my knowledge" response to the question of whether he had referred to Barber as a "scab."

Considering the foregoing and crediting Barber's testimony, I conclude that threats were made to Barber by Powell and Cole. The threats and comments of Powell and Cole clearly reveal that animosity towards Barber among the employee union members existed because of his lack of union membership.[10]

It is not disputed that Guffey attempted to persuade Barber to join the Union in 1979. It is also not disputed that Guffey confronted Barber about Barber's threat regarding the automobile bumper. It is clear that there was no love lost between the two men. However, I am unable to credit Barber's claim over Guffey's clear and specific denial that Guffey told Barber if he did not join the Union, he would not be working for the Company. Barber failed to include in his prehearing statement to the Board any reference to the alleged threat by Guffey, although he did refer to the confrontation with Guffey. There was no indication that Guffey's alleged threat was revealed by Barber to the Board prior to the hearing. Under these circumstances, and because Guffey's denial that he made such a remark was emphatic and convincing, and although Guffey may well have used persuasive arguments to insure Barber's joining the Union, I am not convinced that Barber's recollection of the alleged remark was reliable, and I credit Guffey over Barber in this instance.

[10] I find it unnecessary to decide whether Cole and Powell were union stewards and agents of Respondent at the time of the threats made to Barber. It is sufficient that I conclude that animosity between them and Barber existed as a result of his lack of union membership, and such animosity would not likely be diminished at any subsequent time when they became stewards while Barber was not a union member.

Barber also failed to include in his prehearing statement to the Board the remark he attributed to Newsome to the effect that while Barber was not paying dues, the Union was getting even by knocking him out of going to the warehouse work. Nevertheless, Barber did subsequently prior to the hearing relate the matter to the Board attorney. Newsome, whose stewardship did not extend to Barber's work area, denied in his brief testimony that he had even talked to Barber about Barber's removal from the warehouse work. I am not convinced that Newsome's remark was the figment of Barber's imagination. Accordingly, and because on balance I found Barber a more believable witness than Newsome, I credit Barber on the matter.

I likewise credit Barber's testimony that alternate union steward McRoy told him that if Barber was interested in getting back in the Union, the Union would see what it could do to get his warehouse assignment back for him. McRoy generally was not impressive as a witness. Moreover, contrary to previous assertions made to Board investigators, McRoy conceded in his testimony he had at least once solicited Barber to join the Union. His testimony with respect to prior complaints by other employees about Barber's warehouse work and resolution of such complaints was confusing, contradictory, and unsubstantiated. Accordingly, and for other reasons cited below for not believing McRoy, I find that McRoy did make the statement attributed to him by Barber.

It is clear that Newsome was a steward and McRoy was an alternate steward during that period of time immediately surrounding the events on which the charge herein is based. Indeed, McRoy was the acting steward during the absence of Finch when the employee complaints regarding Barber's warehouse work were allegedly made. And, while Newsome was not the steward in Barber's area, he was acting within the scope of his stewardship authority in commenting upon the basis for the filing of a grievance, and any listening employee could reasonably believe that he was an authoritative source of information relative to grievance initiation and processing. The comments of Newsome and McRoy were directly related to the processing of the grievance which had been filed and which adversely affected Barber. Under the applicable collective-bargaining agreement, stewards had the authority to investigate and present grievances to management. They further were authorized conduits of union messages.[11] Thus, I conclude that in making the statements to Barber, Newsome and McRoy were acting within the scope of their authority and I conclude that their comments are imputable to Respondent, and Respondent is responsible therefor. See *International Brotherhood of Teamsters, Dallas General Drivers, Warehousemen and Helpers Local 745 (Transcon Lines)*, 240 NLRB 537 (1979); *International Brotherhood of Teamsters, General Drivers, Chauffeurs and Helpers Local Union No. 886 (Lee way Motor Freight, Inc.)*, 229 NLRB 832 (1977), enfd. without opinion, Docket No. 77-1629 (D.C. Cir. 1978).

The statements of Newsome and McRoy to Barber clearly revealed an ulterior motivation in the initiation and processing of the grievance affecting Barber. On the testimony of McRoy and Finch, Respondent would have me believe that the grievance on Barber's warehouse work was employee initiated and not instigated by the Union. Although Finch and McRoy support each other in certain respects, there was no employee corroboration on the point of the initiation of the grievance. Such employee corroboration would appear to be an important part of the Union's defense, and the failure to produce the named employee complainants suggests the absence of any such complainants. See *Local 138, International Union of Operating Engineers, AFL-CIO (Building Contractors' Association, Inc.)*, 233 NLRB 267 (1977). Such employee complainants would apparently be available to the Union since they were, according to McRoy, union members and supportive of the Union's position with respect to Barber. Moreover, it is undisputed that the grievance was not filed by an employee, but by Finch, the steward acting within the scope of her authority and, I find, like Newsome and McRoy, an agent of the Union.

I have already indicated my disbelief of McRoy. His testimony is rendered further incredible by records received in evidence as accurate company records of hours worked by the inspectors during the relevant period.[12] McRoy testified that inspectors Calvin Dallas, Gaye Kegan, and Phyllis Jones complained to him on Friday (July 11) about Barber's warehouse work while Finch was still on vacation, and he did not report the matter to Finch until her return on July 15. The company time records show, however, that the inspectors were all on vacation through July 14. It is thus incredible that Dallas, Kegan, and Jones came to McRoy during their vacation time to complain about Barber who was also on vacation at the time.

Finch was no more credible than McRoy in demeanor nor was the content of her testimony persuasive. Finch did not impress me as completely frank.[13] Moreover, her testimony was not consistent with McRoy's. Thus, in contradiction of McRoy's contention that the inspectors had always complained about Barber's overtime at the warehouse, Finch's testimony was that she had not heard of any complaints until July 14 even though she had been the steward in Barber's department for 2 years. Moreover, Finch's testimony was contradicted by other aspects of McRoy's testimony. McRoy contended that the issue of Barber's warehouse assignment had been in issue much earlier, but was resolved by then steward Powell working out an agreement that the job would be assigned on a rotating or seniority basis. Finch testified, however, that without any prior complaints she broached the subject of Barber's warehouse work to Bob Niswonger, the vice president of manufacturing, during a discussion with Niswonger on other problems about 2 months prior to filing the grievance regarding Barber. However, in that discussion Finch said she was merely complaining that the warehouse job should be made a permanent position and that Barber's use violated the

[11] See G.C. Exh. 2, art. 5.

[12] Resp. Exh. 3.

[13] Finch's tendency to exaggerate is shown by her testimony, clearly rebutted by the company time records, that Barber's warehouse work gave him overtime every day.

temporary transfer clause. Since the discussion was inconclusive, Finch testified she was content to leave the matter as it was if there were no complaints, with the intention of subsequently negotiating the warehouse position into the next contract.

I find Finch's unsupported testimony regarding the discussions with Niswonger incredible and improbable.[14] First, in the absence of a complaint, it is unlikely the subject would have been broached with Niswonger. Secondly, if Finch had considered Barber's warehouse work to constitute a clear and serious breach of the temporary transfer clause as the Union now claims, it is much more likely that she would have insisted on a remedy at that point and, in the absence of immediate remedial action, would have filed a grievance.

The timing of the filing of the grievance regarding Barber's job also strongly indicates, as urged by the General Counsel, that such action was discriminatorily motivated. Barber had been doing the work for a number of years without prior complaint from fellow inspectors. Indeed, it appears that the other inspectors were not qualified for the work since Jones, who replaced Barber in the warehouse work as a result of the Union's grievance, had to receive special training. Furthermore, the filing of the grievance followed within 1 week after the Union admittedly received Barber's letter revoking his membership and checkoff authorization on July 7[15] when complaints allegedly began to be made about Barber's warehouse assignment. And, although the complaints were claimed to be predicated on Barber's opportunity to make substantial overtime through his warehouse work, the company time records reflect that Barber had worked only 6-1/2 hours of overtime between May 1 and the date the grievance was filed.[16] This compares with 11-1/2 hours in April, 14 in March, none in February, and 2 in January. Thus, and assuming that all of Barber's overtime could be attributable to his warehouse assignment, it is clear there was no significant increase in his overtime work around the time of the filing of the grievance which would serve to attract attention and provoke discontent among his fellow inspectors who had tolerated Barber's assignment for so long before. In short, aside from Barber's withdrawal from the Union, which was admittedly known to Finch when the grievance was filed because "he told everybody," nothing had happened to trigger the employee complaints on which the grievance was based. Under these circumstances and considering the statements of McRoy and Newsome to Barber, and discrediting Finch's and McRoy's testimony to the contrary, I conclude that the grievance on Barber was not employee initiated and, on the contrary, was initiated by McRoy and Finch as union representatives.[17]

Finally, contrary to the Union's contention, the merit of the grievance on Barber's job is not so clearly meritorious insofar as it relates to the temporary transfer clause as to preclude the existence of discriminatory motivation on the Union's part in the filing and processing of the grievance. Of course, it is not necessary for the Union's defense that its interpretation of the temporary transfer clause be correct. It is only necessary that the Union not act unreasonably, arbitrarily, unfairly, or without legitimate purpose in taking its position on the contractual clause. *Wanzer Dairy Co.*, 154 NLRB 782, 793 (1965). The unreasonableness of the Union's interpretation of the provision would, however, tend to reflect ulterior and discriminatory motivation. Here, Barber had been doing the warehouse work for several years prior to the advent of the Union and the Union contract. He had continued to do it for three years following the advent of the Union and under the Union contracts. In view of this history, his customary and frequent assignment to the warehouse is more consistent with the existence of a permanent job category rather than a series of temporary transfers. Moreover, putting the job up for bid did not, insofar as this record shows, resolve the temporary transfer contention of the Union. Thus, Finch had argued that Barber's warehouse work had violated the temporary transfer clause since the Company did not leave Barber's regular position vacant at the times when he went to the warehouse and instead filled that position with another inspector. Yet, the record does not show any change in this procedure simply because someone more senior than Barber, in this case union member Jones, bid on and was subsequently assigned Barber's work. Presumably, someone else would have had to take Jones' regular work when she performed warehouse work. The record, therefore, shows no change which would appear to resolve the Union's complaint under the temporary transfer clause. Accordingly, I conclude the Union's reliance on the temporary transfer clause is not so reasonable as to escape the conclusion of the Union's unlawful motivation in processing the grievance that the record otherwise dictates. On the contrary, the failure to resolve the underlying concern relative to the temporary transfer clause while at the same time removing Barber indicates the Union's unlawful motivation.

Considering all the foregoing, and having credited the testimony of Barber over that of McRoy and Newsome, I conclude that the General Counsel has established a *prima facie* case of a violation of Section 8(b)(1)(A) and (2) of the Act by the Union in its filing of the grievance adversely affecting Barber. See *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). The General Counsel contends that the Union's action herein with respect to Barber was not predicated on mixed motives in

[14] Finch's testimony regarding the conversations with Niswonger was not contradicted. However, a trier of fact is not required to accept uncontradicted testimony as true if it contains improbabilities or there are reasonable grounds for otherwise concluding that it is false. *Operative Plasterers' & Cement Masons' International Association Local 394 (Burnham Brothers, Inc.)*, 207 NLRB 147 (1973). Moreover, as I have already related, on demeanor I did not find her altogether credible.

[15] The Union did not acknowledge receipt of Barber's first letter dated June 24.

[16] The records do not show whether Barber's overtime actually resulted from his warehouse assignments, but it is reasonable to infer from Barber's own admissions that he averaged 6 to 10 hours a month overtime at the warehouse and that such overtime was attributable to his warehouse work.

[17] I am cognizant of the fact that subsequent to having been awarded Barber's warehouse work and then removed from it as a result of a Board settlement with the Company, Jones filed a grievance and a charge with the Board against the Company. However, Jones' interest in the job shown after training for the position and occupying it does not establish the initial interest in it sufficient to initiate a grievance particularly where no previous interest was shown by Jones in the position for several years.

any respect so that *Wright Line, supra*, is inapplicable. The Union, on the other hand, argued that even if the General Counsel established a *prima facie* case of a violation and that there was some unlawful motivation in its actions, the case is one of dual motivation and *Wright Line, supra*, requires further inquiry into whether the Union would have taken the same action against Barber notwithstanding the existence of discriminatory concerns. I have found the Union's actions here were pretextual, but, assuming that a dual motivation situation existed, i.e., discrimination and a legitimate concern over enforcing a contract clause, I am persuaded that the Union failed to demonstrate that it would have taken the same action against Barber even in the absence of Barber's resignation from the Union. Since I discredit that testimony of McRoy and Finch that the grievance was employee-instigated, and because the Union knew of the alleged contract violation for years but failed to grieve the matter until immediately after Barber, to the admitted knowledge of Finch and McRoy, had resigned from the Union, I conclude that the grievance would not have been filed had Barber not resigned. Accordingly, I conclude that the Union failed to rebut the General Counsel's *prima facie* case of a violation of Section 8(b)(1)(A) and (2).

CONCLUSIONS OF LAW

1. Cavalier Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, Teamsters Local Union No. 515, is a labor organization within the meaning of Section 2(5) of the Act.

3. By attempting to cause, and causing, Cavalier Corporation to change the job duties of its employee David E. Barber because of Barber's lack of membership in the Union, the Union has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(2) and 8(b)(1)(A) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Union has engaged in certain unfair labor practices, I shall recommend that the Union be ordered to cease and desist therefrom and take affirmative action designed to effectuate the purposes of the Act.

Since I have found that the Union attempted to cause, and caused, Cavalier Corporation to change the job duties of David Barber because of Barber's lack of membership in the Union and to this end filed a grievance discriminatorily seeking to adversely affect the job assignment of Barber because of his lack of membership in the Union, I find that in order to dissipate the effects of the Union's unfair labor practices, it will be necessary to order the Union to cease and desist from processing any grievance initiated or instigated by it seeking Barber's reassignment from the position he held prior to July 16, 1980.[18] Furthermore, it shall be recommended that the Union be ordered to withdraw its grievance regarding Barber's job assignment and duties as they existed prior to the filing of the grievance. It shall also be ordered that the Union notify Cavalier Corporation that it has no objection to the employment of Barber in the same position with the same assignments that he occupied prior to the filing of the July 16, 1980, grievance. Finally, I shall recommend that Respondent make Barber whole for any loss of earnings suffered by him by reason of the discrimination against him. The backpay obligation shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[19]

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[20]

The Respondent, Teamsters Local Union No. 515, Chattanooga, Tennessee, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause the Cavalier Corporation to change the job duties or assignments of employee David E. Barber because of his lack of membership in the Union.

(b) Maintaining or processing grievanances with regard to the job duties or assignments of employee David E. Barber which were filed and maintained because he resigned from membership in the Union.

(c) In any like or related manner restraining or coercing employees of Cavalier Corporation in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the purposes of the Act:

(a) Notify Cavalier Corporation, in writing, that it has no objection to the utilization of David E. Barber in the same position with the same job duties that he possessed prior to July 16, 1980.

(b) Withdraw its grievance and process no further grievances with regard to the job assignment and duties of David E. Barber which were filed and maintained because he resigned his membership in Respondent.

(c) Make whole David E. Barber for any loss of earnings he may have suffered as a result of the unlawful dis-

[18] This order shall be construed as being applicable to the processing of any presently existing grievance relative to Barber's job assignments and duties as they existed prior to July 16, 1980, including the grievance filed by Jones on October 20, 1980. (Resp. Exh. 8.) Jones' grievance resulted from the Union's initial grievance on Barber's job assignments and was clearly tainted by it. This order shall not be construed, however, as prohibiting the filing of any subsequent grievances on Barber's job assignment which are not discriminatorily initiated or instigated by the Union.

[19] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[20] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

crimination against him in the manner set forth in the section above entitled "The Remedy."

(d) Post at its business office, meeting halls, or other places where it customarily posts notices copies of the attached notice marked "Appendix."[21] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's authorized representative of Respondent, shall, be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Furnish the Regional Director for Region 10 signed copies of said notice for posting by Cavalier Corporation, if willing, in places where notices to its employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being signed by an official representative of Respondent, be forthwith returned to the Regional Director for disposition by him.

(f) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[21] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."